

North Dakota

Tax Information for Native Americans and Tribal Governments

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Scott Davis
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*Greetings from the
North Dakota Indian Affairs Commission
and the
North Dakota Office of State Tax Commissioner*



Cory Fong
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Dear Friend,

Welcome to our booklet, *North Dakota Tax Information for Native Americans and Tribal Governments*. This is a new venture for the North Dakota Indian Affairs Commission and the Office of State Tax Commissioner as we worked together to produce this comprehensive resource.

In this book, you will learn about a number of state tax types that apply to Native Americans and Tribal Governments. Please note that this document does not address federal taxation issues. Rather, it guides the reader through the sometimes-complicated interplay between state taxation and tribal sovereignty.

This booklet covers a number of tax types, including:

- Individual and Corporate Income Taxes
- Sales and Use Taxes
- Motor Vehicle Excise Tax
- Motor Vehicle Fuels and Special Fuels Taxes
- Alcohol and Tobacco Taxes
- Property Tax
- Oil and Gas Taxes

Within each tax type, we provide the related North Dakota Century Code provisions and the general rule along with any notable exceptions to the general rule. As you review the tax types, you will find helpful scenarios based on real-life questions about how state taxes apply to tribal members.

We hope you find this document helpful. We understand that you might have questions or need more information after reading this material. Please feel free to use the contact information that we provide for each tax type. Our staff will be happy to discuss your situation and help you find answers to your questions.

We welcome your feedback and invite you to contact us if you have questions about this resource.

Sincerely,

Scott Davis
Commissioner
Indian Affairs Commission



Cory Fong
Tax Commissioner
Office of State Tax Commissioner



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Please Note: This publication summarizes the law and applicable regulations in effect when the publication was written, as noted on the cover. However, changes in the law or in regulations may have occurred since that time. If there is a conflict between the text in this publication and the law, decisions will be based on the law and not on this publication.



Cover photo courtesy of LeRoy Juve, statue of Sakakawea located on the Capitol grounds, Bismarck, North Dakota.

Individual Income Tax

North Dakota Century Code ch. 57-38

General Rule

Every resident of North Dakota who has a federal income tax filing requirement is required to file a North Dakota income tax return.

Every nonresident who has a federal income tax filing requirement and derives income from North Dakota is required to file a North Dakota income tax return.

Exception

- There are exceptions for certain Native Americans, interstate transportation employees, Minnesota and Montana residents, and military personnel and their spouses.
- Income of an enrolled member of a federally recognized Indian tribe, who resides within the boundaries of a reservation in this state or in this state and an adjoining state, is exempt if the income is from activities or sources within the boundaries of the reservation.

Examples

- A. The individual is an enrolled member of the Turtle Mountain Band of Chippewa who lives and works on the Standing Rock Sioux Reservation.
 1. The income tax exemption would apply because:
 - a. The individual is an enrolled member of any federally recognized Indian tribe.
 - i. The Turtle Mountain Band of Chippewa.
- B. The individual is an enrolled member of the Standing Rock Sioux Tribe who earns income within the boundaries of the Standing Rock Sioux Reservation but lives in Bismarck.
 1. The income tax exemption does not apply because:
 - a. Even though the individual is an enrolled member of a federally recognized Indian tribe who earns income within the boundaries of a reservation situated in North Dakota the individual does not live within reservation boundaries.
- C. The individual is an enrolled member of the Standing Rock Sioux Tribe who works within the boundaries of the Standing Rock Sioux Reservation but lives five miles south of the North Dakota border in South Dakota.
 1. The income tax exemption would apply because:
 - a. The individual is an enrolled member of any federally recognized Indian tribe.
- b. The individual lives on a reservation situated in North Dakota.
 - i. The Standing Rock Sioux Reservation.
- c. The income was earned within the boundaries of a reservation situated in North Dakota.
 - i. The Standing Rock Sioux Reservation.

- i. The Standing Rock Sioux Tribe.
 - b. The individual lives on a reservation situated in North Dakota or situated in North Dakota and an adjoining state.
 - i. The South Dakota portion of the Standing Rock Sioux Reservation.
 - c. The income was earned within the boundaries of a reservation situated in North Dakota or situated in North Dakota and an adjoining state.
 - i. The South Dakota portion of the Standing Rock Sioux Reservation.
- D. The individual is an enrolled member of the Assiniboine Tribe in Montana, but works and lives on the Standing Rock Sioux Reservation.
 - 1. The income tax exemption would apply because:
 - a. The individual is an enrolled member of any federally recognized Indian tribe.
 - i. The Assiniboine Tribe.
 - b. The individual lives on a reservation situated in North Dakota.
 - i. The Standing Rock Sioux Reservation.
 - c. The income was earned within the boundaries of a reservation situated in North Dakota.
 - i. The Standing Rock Sioux Reservation.

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Corporate Income Tax

North Dakota Century Code ch. 57-38

General Rule

Every corporation engaged in business in North Dakota or having sources of income in North Dakota must file a North Dakota corporation income tax return.

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Exception

- An exemption applies if the corporation is chartered as an Indian corporation and has not chartered with the Secretary of State.

Examples

- A. A corporation, whose stockholders are all Native American, charters with the Secretary of State.
 1. The corporation will be subject to corporate income tax because once chartered with the state the corporation becomes a separate entity distinct from its owners and no longer retains any Native American status.
- B. A corporation is chartered with the tribe and operates outside of the boundaries of a reservation. The corporation is not chartered with the Secretary of State.
 1. This corporation will be recognized as an Indian corporation and will be exempt from the corporate income tax.
 - a. Whether the corporation operates inside or outside the boundaries of a reservation has no effect on the exempt status of the corporation.

Sales and Use Tax

North Dakota Century Code chs. 57-39.2 and 57-40.2

General Rule

A. Sales Tax

1. A 5% tax is imposed upon the gross receipts of retailers from all sales at retail, including the leasing or renting of tangible personal property.
2. The sales tax is paid by the purchaser and collected by the retailer.

Exception

- Gross receipts from all sales made to an Indian tribe are exempt from the 5% tax.
- “Gross receipts from sales within the boundaries of any reservation in this state to an individual who resides within the boundaries of any reservation in this state and who is an enrolled member of a federally recognized Indian tribe” are exempt from the 5% tax.

B. Use Tax

1. The purchase price of tangible personal property purchased outside of the state for storage, use or consumption within the state is subject to a use tax at the rate of 5% of the purchase price of the property.
2. In addition, tangible personal property not originally purchased for use in North Dakota is subject to a use tax at the rate of 5% of the

fair market value of the property at the time it was brought into the state.

- a. Credits are allowed for sales and use taxes paid to other states.
- b. Use tax rates are the same as the sales tax rates.
- c. Use tax is collected by any retailer that has sufficient presence in North Dakota.
- d. When the retailer has not collected sales or use tax, the purchaser is required to report and remit the tax due.

Exception

- Use tax does not apply to items sold on an Indian reservation to an enrolled member of a federally recognized tribe.
- Use tax does not apply to untaxed property brought onto an Indian reservation by an enrolled member of a federally recognized tribe for storage, use, or consumption on the reservation by the enrolled member.

Examples

Sales Tax

- A. A Native American retailer’s place of business is located within the boundaries of a reservation in this state. The retailer makes a sale to a Native American customer and a non-Native American customer.

1. The retailer cannot be required to collect North Dakota sales tax on sales to either the Native American customer or the non-Native American customer if the sale occurs on the reservation.
 - a. The non-Native American customer is responsible for paying the applicable amount of use tax on the purchase.
 2. Additionally, the retailer is not required to hold a North Dakota sales tax permit.
- B. A non-Native American retailer's place of business is located within the boundaries of a reservation in this state. The retailer makes a sale to a Native American customer and a non-Native American customer.
1. The retailer may not collect sales tax on purchases made by Native American customers.
 2. The retailer must collect and remit sales tax on purchases made by a non-Native American customer.
- C. A Native American retailer and a non-Native American retailer, who both have their place of business located outside the boundaries of a reservation, make deliveries of goods to Native American customers living within the boundaries of a reservation.
1. Neither retailer may charge sales tax on the purchase if it is delivered to a Native American customer within the boundaries of a reservation.
 2. Both retailers are required to document the exempt status of the sale.
- D. A non-Native American retailer, operating outside the boundaries of a reservation, delivers goods to a Native American purchaser and a non-Native American purchaser living on the reservation.
1. The retailer may not collect sales tax on the purchase made by the Native American as long as the goods are delivered within the boundaries of the reservation.
 2. The retailer must collect sales tax on the purchase made by the non-Native American.
- E. A Native American retailer, operating within the boundaries of a reservation, delivers goods to a Native American and non-Native American purchaser outside the boundaries of a reservation.
1. The retailer would be required to collect and remit sales tax on both the Native American and non-Native American customer because delivery was not made within the boundaries of a reservation.
- F. A retailer makes a sale to a Native American Tribal government.
1. The Tribal government entity will be exempt from the payment of sales tax if a sales tax exemption certificate is provided to the retailer at the time of the purchase.

Use Tax

- A. A Native American, living within the boundaries of a reservation in this state, purchases clothing over the internet. The clothing is delivered onto the reservation for use on the reservation.

1. Use tax would not apply to this purchase because the goods were delivered within the boundaries of a reservation to an enrolled member of a federally recognized tribe for use on the reservation.
- B. A Native American, living outside of the boundaries of a reservation in this state, purchases clothing over the internet.
 1. Use tax would be due on the purchase of clothing unless the online retailer collected the appropriate amount of sales tax on the purchase.
 - a. One-Time Sales and Use Tax
Returns can be found online at:
www.nd.gov/tax/salesanduse/forms/one-timeremittance.pdf
- C. A Native American and a non-Native American that reside within the boundaries of a reservation purchase furniture in Montana where no sales or use tax is imposed. Both individuals bring the furniture to their homes on the reservation for use.
 1. Use tax is due on the purchase price of the furniture purchased by the non-Native American and brought to the reservation for use.
 2. Use tax does not apply to the furniture purchased by the enrolled member and brought to the reservation for use.

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Motor Vehicle Excise Tax

North Dakota Century Code ch. 57-40.3

General Rule

A 5% excise tax is imposed on the purchase price or fair market value of any motor vehicle either purchased or acquired within or outside of the State if the vehicle will be registered in North Dakota.

If tax is paid on a vehicle in another state and the tax paid is less than the amount of tax that would have been due had the vehicle been purchased in North Dakota the balance of the difference between the two tax amounts will be due.

Exception

- An exemption from motor vehicle excise tax is available on transactions in which a motor vehicle is acquired at any location in the state by an enrolled member of a federally recognized Indian tribe who also resides within the boundaries of any reservation in this state.

Examples

- A. An enrolled member of a federally recognized tribe, who lives on a reservation in North Dakota, purchases a vehicle in Bismarck.
 1. The 5% motor vehicle excise tax will not apply to the transaction because the vehicle was purchased by an enrolled member of a federally recognized tribe who also lives on a reservation in North Dakota.
- B. An enrolled member of the Standing Rock Sioux Tribe, who lives outside the boundaries of a reservation,

purchases a vehicle in Bismarck and takes possession of the vehicle at the dealership.

1. The 5% motor vehicle excise tax will apply to the transaction because the vehicle was not delivered to the reservation of the enrolled member.
- C. An enrolled member of the Turtle Mountain Band of Chippewa, who lives outside the boundaries of a reservation, purchases a vehicle in Bismarck but does not take possession of the vehicle until it is delivered to the Standing Rock Sioux Reservation.
 1. The 5% motor vehicle excise tax will apply to the transaction because possession of the vehicle was not taken within the boundaries of the reservation in which the purchaser is an enrolled member.

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Motor Vehicle Fuels and Special Fuels Taxes

North Dakota Century Code chs. 57-43.1 and 57-43.2

General Rule

A motor vehicle fuel tax of 23 cents per gallon is imposed on motor vehicle fuel, such as gas and gasohol, sold to retailers and consumers.

A special fuels tax of 23 cents per gallon on fuels including diesel, biodiesel, kerosene, compressed natural gas, and propane is imposed on fuel sold for use in licensed vehicles. An excise tax of 2% of the value of the sale is applied to sales of propane.

An excise tax of 4 cents per gallon is imposed on dyed diesel fuel which is used primarily in vehicles and equipment operating off of the roadways.

Exception

- Native American Tribal agencies are exempt from North Dakota motor vehicle and special fuel taxes. If the tax is paid, the Tribal agency may apply for a full refund.
- A Native American may also apply for a refund of motor vehicle or special fuel taxes paid if the fuel was purchased from a retail fuel dealer located on the Indian reservation where the Native American is an enrolled member and a Fuel Tax Agreement is not in place.
- A Native American, living on the reservation where enrolled, is exempt from tribal tax on purchases of propane if the propane is used for purposes such as heating or agriculture. The exemption will not apply if the propane is purchased for use in a vehicle.

- A Native American, living on the reservation where enrolled, is exempt from tribal tax on purchases of dyed diesel.

Agreements

- A. The State of North Dakota has entered into Fuel Tax Agreements with several Native American Tribes. These include:
1. The Standing Rock Sioux Tribe, effective January 1, 1999.
 2. The Spirit Lake Tribe, effective November 1, 2006.
 3. Three Affiliated Tribes, effective October 1, 2007.
 4. The Turtle Mountain Band of Chippewa, effective September 1, 2010.
- B. The terms of each Agreement have been implemented on the reservations through tribal ordinances.
- C. These Agreements provide for the single administration, collection, and distribution of fuel taxes on behalf of the State and the Tribes for fuel sales within the boundaries of the reservations.
- D. The tax rates for motor vehicle fuel sales are consistent both on and off the reservation.
- E. The distribution of the tax is based on the official United States census of Native Americans who are enrolled Tribal members, Native Americans that are not enrolled, and non-

Native Americans residing on the reservations.

- F. The assumptions in the Agreements are:
1. A Native American who is an enrolled member on the reservation where fuel is purchased is paying the Tribal Tax.
 2. A Native American who is not an enrolled member on the reservation where fuel is purchased is paying the State Tax just as a non-Native American would.
 3. A non-Native American is paying the State Tax.
- G. Tax collected on fuel sales at a retail station on a reservation are distributed between the State and the respective Tribe based on the population census.
- H. Bulk sales delivered to a consumer on a participating reservation are subject to the appropriate tax based on a member or non-member status.
- I. Tribal fuel taxes are administered by the Tax Department.
- J. All fuel dealers conducting business on the reservation must apply for a Tribal fuel license with the Tax Department; this is in addition to the requirements for a State fuel license.
- K. A Tribal fuel tax license must be obtained by: 1) retail stations located on a reservation; 2) fuel dealers located either on or off the reservation supplying retail locations located on the reservation; and 3) fuel dealers located either on or off the reservation supplying bulk sales to consumers on the reservation who are enrolled Tribal members.

Examples

- A. A Native American purchases fuel on the reservation in which he lives and is enrolled. A tribal fuel tax does not exist on this reservation.
1. No state tax would be charged if the motor vehicle or special fuel was purchased in bulk and delivered to the reservation.
 2. A state tax of 23 cents per gallon would be charged if the fuel was purchased at the pump.
 - a. However, the Native American who purchased the fuel would be eligible to apply for a refund of the amount of tax paid.
 - i. To apply for a refund the purchaser must include their name, address, social security number, and tribal identification number on the refund form. Forms can be found at the following link:
www.nd.gov/tax/fuel/forms/
 - ii. The original receipt or invoice must also be attached to the refund form. The information on the receipt or invoice must include the seller's name and address, the date the fuel was purchased, the type of product purchased and number of gallons, and the purchaser's name. There should also be a document number listed on the invoice or receipt.
 - iii. If the original receipt or invoice is not available, a duplicate may be submitted along with a separate

affidavit completed by the seller in the format required by the Tax Department. In the alternative, a “certified histories” document prepared by the seller of the fuel providing the required details of the purchase may be accepted.

- B. A Native American, living on the reservation in which enrolled, purchases fuel on that reservation. A fuels Agreement is in place on this reservation.
 - 1. No state tax but a 23 cent tribal tax would be charged if the purchase was a retail sale of motor vehicle or special fuel.
 - 2. No state tax but a 23 cent tribal tax would be charged if the purchase was a bulk sale of motor vehicle or special fuel delivered to the reservation.
 - 3. No state or tribal tax would be charged if the purchase was a bulk sale of dyed fuel delivered to the reservation.
- C. A non-Native American and a non-enrolled member purchase fuel on a reservation that has a fuels Agreement in place.
 - 1. No tribal tax but a 23 cent state tax would be charged if the purchase was a bulk sale of motor vehicle or special fuel.
 - 2. No tribal tax but a 4 cent state tax would be charged if the purchase was a retail sale of dyed fuel.

- D. A Tribal Government purchases fuel on or off a reservation.
 - 1. The Tribal Government would be eligible to apply for a refund of the amount of state or tribal tax paid.

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Alcohol Tax

North Dakota Century Code Title 5 and ch. 57-39.6

General Rule

There are multiple taxes that may apply to the sale or purchase of alcohol in North Dakota. These taxes include:

1. A privilege tax (typically imposed at wholesaler/distributor level);
2. A gross receipts tax on sales; and
3. A use tax on purchases.

A. Privilege Tax

1. A privilege tax is imposed upon all alcoholic beverage wholesalers, manufacturers, domestic wineries, domestic distilleries, microbrew pubs, and direct shippers for the privilege of doing business in this state.
2. The following privilege tax rates apply:
 - a. Beer in bulk containers – 8 cents per wine gallon
 - b. Beer in bottles and cans – 16 cents per wine gallon
 - c. Wine, including sparkling wine, containing less than 17% alcohol – 50 cents per wine gallon
 - d. Wine containing 17% to 24% alcohol – 60 cents per wine gallon
 - e. Distilled spirits – \$2.50 per wine gallon
 - f. Alcohol – \$4.05 per wine gallon

3. Both suppliers and wholesalers are required to obtain a license from the Tax Department.
4. Wholesalers, microbrew pubs, domestic wineries, and domestic distilleries are responsible for remitting the tax to the Tax Department.
5. All persons engaging in the sale of alcoholic beverages at retail must obtain the appropriate licenses with the exception of nonprofits engaging in the sale of alcohol for fundraising activities.

Exception

- There are not any specifically delineated exemptions to the privilege tax on alcoholic beverages for Native Americans within the North Dakota Century Code.
 - Yet, there also are not any Native American wholesalers, microbrew pubs, domestic distilleries or domestic wineries currently operating in the State. Thus, there has never been an instance of the privilege tax on alcoholic beverages being remitted by a Native American wholesaler.

B. Gross Receipts Tax

1. North Dakota imposes a 7% gross receipts tax on retail sales of alcoholic beverages sold for consumption either on or off the premises.

C. Use Tax

1. A person that receives alcoholic beverages for storage, use, or consumption in North Dakota is also subject to the 7% gross receipts tax.

Exception

- Credits are allowed for similar taxes paid to other states.

Examples

Alcoholic Beverages Privilege Tax

- A. As there are no Native American wholesalers, microbrew pubs, domestic wineries, or domestic distilleries in North Dakota the privilege tax on alcoholic beverages is, for all practical purposes, inapplicable.

Alcoholic Beverages Gross Receipts and Use Tax

- B. A Native American retailer operating within the boundaries of a reservation makes a sale of alcoholic beverages to a Native American customer and a non-Native American customer.
 1. The retailer is not required to collect gross receipts tax from the Native American customer or the non-Native American customer.
 - a. The non-Native American customer is required to report the purchase and remit the applicable amount of use tax to the Tax Department.
- C. A non-Native American retailer operating within the boundaries of a reservation makes a sale of alcoholic

beverages to a Native American customer and a non-Native American customer.

1. The retailer is not allowed to collect gross receipts tax on the purchase made by Native American customer.
 2. The retailer is required to collect and remit gross receipts tax on the purchase made by the non-Native American customer.
- D. A Native American retailer operating outside the boundaries of a reservation makes a sale of alcoholic beverages to a Native American customer and a non-Native American customer.
1. The retailer is required to collect and remit gross receipts tax on the purchases made by both the Native American customer and the non-Native American customer as the sale took place outside the boundaries of a reservation.

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Cigarette and Tobacco Tax

North Dakota Century Code ch. 57-36

General Rule

There are multiple taxes that may apply to the sale or purchase of cigarettes and other tobacco products in North Dakota. These taxes include:

1. An excise tax (typically imposed on wholesalers/distributors);
2. A sales tax and
3. A use tax.

A. Excise Tax

1. Cigarettes weighing less than three pounds per thousand are taxed at 44 cents per pack of 20 and 55 cents per pack of 25.
2. Cigarettes weighing more than three pounds per thousand are taxed at 22.5 mills per cigarette.
3. Tobacco products, with the exception of cigarettes and specific roll-your-own tobacco, such as pipe tobacco, chewing tobacco, snuff and cigars are subject to a tobacco products excise tax.
 - a. Pipe tobacco and cigars are taxed at 28% of the wholesale purchase price.
 - b. Snuff is taxed at 60 cents per ounce and chewing tobacco is taxed at 16 cents per ounce.
 - i. The tax is administered in a manner similar to the cigarette tax.

4. Both wholesalers/distributors and dealers must be licensed by the Attorney General.
 - a. Wholesalers/distributors remit monthly reports, along with any applicable excise tax, to the Tax Department.

Exception

- Wholesalers/distributors are not required to collect the excise tax on sales of cigarettes to enrolled tribal members who have been granted authority by the tribe to conduct retail sales of cigarettes within the boundaries of the reservation.
- Wholesalers/distributors will report these sales to the Tax Department as exempt sales.

B. Sales Tax

1. A sales tax is imposed on the gross receipts of retailers. This tax is in addition to the cigarette and tobacco excise tax. The 5% sales tax on cigarette and tobacco products is paid by the purchaser and collected by the retailer.

Exception

- Sales made to a tribal government are exempt from sales tax.
- Receipts from sales made on an Indian reservation to an enrolled member of a federally recognized tribe who resides within the boundaries of any reservation in this state are exempt from sales tax.

C. Use Tax

1. A consumer use tax on cigarettes will be applied if excise tax was not originally paid at the wholesaler/distributor level.
2. A consumer use tax on other tobacco products will be applied if excise tax was not originally paid.
3. A consumer use tax on cigarettes and other tobacco products will be applied on those products if used, stored, or consumed in North Dakota and on which sales tax was not previously paid.

Exception

- Receipts from sales made to a tribal government are exempt from use tax.
- Receipts from sales made on an Indian reservation to enrolled members of a federally recognized tribe are exempt from use tax.

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Cigarette and Tobacco Tax Agreements

In 1993 a collection Agreement was signed between the Tax Commissioner and the Standing Rock Sioux Tribe. Under this Agreement, the Standing Rock Sioux Tribe levies a cigarette and tobacco excise tax on all licensed wholesalers/distributors operating on the Standing Rock Sioux Reservation. The tax rates are identical to the state tax rates. The Tax Department serves as an agent of the tribe in collecting the tax.

1. Seventy-five percent of the tax, less a 3% administrative fee, is returned to the tribe.
 - a. An exemption applies if the corporation is chartered as an Indian corporation and has not chartered with the Secretary of State.
2. Twenty-five percent, plus the 3% administrative fee, is deposited in the State General Fund.

Examples

Cigarette and Tobacco Excise Tax

- A. A non-Native American wholesaler sells cigarettes or tobacco products to a Native American retailer operating within the boundaries of a reservation.
 1. The wholesaler is not required to remit excise tax on the sale. The wholesaler will report the sale to the Tax Department as an exempt sale.
- B. A Native American retailer operating within the boundaries of a reservation sells cigarettes or tobacco products to

a non-Native American purchaser who intends to place those products for re-sale.

1. The non-Native American purchaser is required to report and remit the applicable amount of excise tax to the Tax Department as tax was not remitted by the original wholesaler who made the tax free sale to the Native American retailer.

Cigarette and Tobacco Sales and Use Tax

- A. A Native American retailer operating within the boundaries of a reservation makes a sale of cigarette or tobacco products to a Native American customer and a non-Native American customer.
 1. The retailer is not required to collect and remit sales tax on the purchase made by the Native American customer or the non-Native American customer because the sale was made by a Native American retailer operating within the boundaries of a reservation.
 - a. The non-Native American customer is required to report the purchase and remit the applicable amount of use tax to the Tax Department.
- B. A non-Native American retailer operating within the boundaries of a reservation makes a sale of cigarette or tobacco products to a Native American customer and a non-Native American customer.

1. The retailer is not allowed to collect sales tax on the purchase made by the Native American customer.
 2. The retailer is required to collect and remit sales tax on the purchase made by the non-Native American customer.
- C. A Native American retailer operating outside the boundaries of a reservation makes a sale of cigarette or tobacco products to a Native American customer and a non-Native American customer.
1. The retailer is required to collect and remit sales tax on the purchases made by both the Native American customer and the non-Native American customer as the sale took place outside the boundaries of a reservation.
- D. A Native American retailer operating within the boundaries of the Standing Rock Sioux Reservation makes a sale of cigarette or tobacco products to a Native American customer and a non-Native American customer.
1. The retail product contains a tribal excise tax for purchases made by both the Native American customer and the non-Native American customer according to the collection Agreement entered into by the Tax Commissioner and the Standing Rock Sioux Tribe.
 - a. Seventy-five percent of the tax collected, less a 3% administrative fee, will be returned to the Standing Rock Sioux Tribe.
 - b. Twenty-five percent of the tax collected, plus the 3% administrative fee, will be deposited in the State General Fund.
- E. A non-Native American purchases cigarettes online and has them delivered to North Dakota outside the boundaries of a reservation.
1. A cigarette tax of 22 mills per cigarette, 44 cents per 20 stick pack, would apply to this purchase because the cigarettes were not first delivered to a wholesaler/distributor in the state.
- F. A Native American purchases cigarettes online and has the product delivered to the reservation on which he resides.
1. Separate and additional tax will not be due on the purchase because the cigarettes were delivered to the reservation for use on the reservation.
 - a. Note that Tribal excise tax would be due if the cigarettes were delivered onto the Standing Rock Reservation in accordance with the existing collection Agreement.

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Property Tax

North Dakota Century Code ch. 57-02

General Rule

- A. All real property, unless specifically exempted, is subject to a property tax. In general, personal property is not taxed.
 - 1. The majority of real property is locally assessed.
 - 2. Other properties, such as railroads, public utilities, and air transportation companies, are centrally assessed by the State Board of Equalization.
- B. A mobile home used as a residence or business is subject to the tax if it is 27 or more feet long or is attached to utility services.
- C. The property tax is determined by multiplying the mill rate times the taxable value of real property.
 - 1. Local mill rates are established to meet the revenue needs of the taxing district. To determine the mill rate, the county auditor divides the total property taxes to be collected for each taxing district by the district's total taxable value.
 - 2. The determination of taxable value begins with the true and full value or market value of the property. The true and full value of residential property is usually established by the local assessor. The assessed value is 50% of the true and full value and the taxable value is 9% of the assessed value.
- D. The county determines and collects the tax and distributes the revenue to

the county, cities, townships, school districts, and other taxing districts. The tax is due January 1 of each year following the year of assessment and is payable without penalty until March 1.

Exception

- Property of Native Americans, where the title cannot be transferred without the consent of the U.S. Secretary of the Interior, is exempt.
- A mobile home located within the boundaries of a reservation and owned by a Native American who resides on that reservation is not subject to taxation.
 - Note that a mobile home located within the boundaries of a reservation, and owned by a Native American, will be subject to tax if the owner does not reside on the reservation.

Examples

- A. Power lines that are located within the boundaries of a reservation.
 - 1. The lines would be placed through use of an easement and centrally assessed by the State Board of Equalization.
- B. A Native American holds land in fee simple that is located within the boundaries of the reservation in which they are enrolled.

1. This land will not be subject to property tax.
 - a. If the same plot of land was owned by a Native American enrolled in a different tribe the property tax would apply.
- C. Allotted Trust Land located outside the boundaries of a reservation is held by a Native American.
 1. This land will not be subject to property tax despite the fact that it is located outside of the boundaries of a reservation because the ownership structure of the land does not allow for title to be transferred without the consent of the U.S. Secretary of the Interior.

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Oil Extraction Tax & Oil and Gas Gross Production Tax

North Dakota Century Code chs. 57-51 and 57-51.1

General Rule

A. Oil Extraction Tax

1. The oil extraction tax is levied on the extraction of oil from the earth.
2. The tax rate is 6.5% of the gross value of crude oil at the well.

B. Oil and Gas Gross Production Tax

1. Oil

- a. The oil and gas gross production tax is imposed in lieu of property taxes on oil and gas producing properties.
- b. A 5% gross production tax rate is applied to the gross value at the well of all oil produced.
- c. Both the producer and purchaser of the oil are required to submit reports to the Tax Department on a monthly basis.

Exception

- The royalty interest in oil produced from a state, federal or municipal holding and from an interest held by an organized Indian tribe is exempt from the gross production tax.

2. Gas

- a. The gross production tax on gas is an annually adjusted flat rate per thousand cubic feet (mcf) of

all nonexempt gas produced in the state.

- b. The annual adjustments are made according to the average producer price index for gas fuels.
- c. The following gas gross production tax rates apply to the periods below:
 - i. From July 1, 2008 through June 30, 2009, the tax rate was \$.1476 per mcf.
 - ii. From July 1, 2009 through June 30, 2010, the tax rate was \$.1831 per mcf.
 - iii. From July 1, 2010 through June 30, 2011, the tax rate was \$.0914 per mcf.
 - iv. From July 1, 2011 through June 30, 2012, the tax rate is \$.1112 per mcf.

Exception

- Gas that is used on the lease for production purposes and the royalty interest in gas produced from a state, federal or municipal holding and from an interest held by an organized Indian tribe is exempt from the gross production tax.

Revenue Sharing Agreement

- A. “The Governor, in consultation with the Tax Commissioner, is authorized to enter into agreements with the Three Affiliated Tribes relating to taxation and regulation of oil and gas exploration and production within the boundaries of the Fort Berthold Reservation.” The Agreement was signed on June 10, 2008, and then resigned on January 13, 2010, after the provision requiring a yearly signing of the Agreement was removed.
1. The Agreement establishes a uniform taxation system for oil and gas production within the boundaries of the Fort Berthold Indian Reservation.
 2. Under the Agreement, the gross production tax rate on Trust Land for oil is 5% and the oil extraction tax rate is 6.5%.
 - a. A 60 month new well exemption will apply for those wells on non-Trust Land.
 3. For gas, the gross production tax rate will be the rate provided in N.D.C.C. § 57-51-02.2.
 4. Oil and gas revenue sharing for Trust Lands is as follows:
 - a. Fifty percent of the gross production and oil extraction taxes must be allocated and paid to the Tribes.
 - b. Fifty percent of the gross production and oil extraction
 5. Oil and gas revenue sharing for non-Trust Lands is as follows:
 - a. Twenty percent of the gross production taxes must be allocated and paid to the Tribes.
 - b. Eighty percent of the gross production and 100% of the oil extraction taxes must be allocated and paid to the State and political subdivisions.

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***Copies of this publication are available from
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